

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of Entergy Arkansas, Inc.'s)	
Notification of Intent to Change Functional)	
Control of Its Missouri Electric Transmission)	
Facilities to the Midwest Independent)	
Transmission System Operator Inc. Regional)	File No. EO-2013-0431
Transmission System Organization or)	
Alternative Request to Change Functional)	
Control and Motions for Waiver and Expedited)	
Treatment.)	

STAFF'S RESPONSE TO ORDER DIRECTING FILING

COMES NOW the Staff of the Missouri Public Service Commission ("Staff") and, for its response to the Missouri Public service Commission's ("Commission's") May 3, 2013, *Order Directing Filing*, recommends the Commission direct Kansas City Power & Light Company ("KCPL"), KCP&L Greater Missouri Operations Company ("GMO"), The Empire District Electric Company ("Empire") and the Missouri Joint Municipal Electric Utility Commission ("MJMEUC") both (i) to present their legal arguments and authority for why this Commission has jurisdiction over those issues which they assert the Commission must decide in this case and (ii) to identify the facts they assert are in dispute:

1. By its *Order Directing Filing* issued May 3, 2013, the Commission ordered Staff to respond to Entergy Arkansas, Inc.'s ("EAI") Motion For Reconsideration of the Commission's *Order Granting Interventions and Setting Procedural Schedule*. In that order the Commission set a common procedural schedule for both this case and File No. EO-2013-0396. EAI filed its motion only in this case.

2. In its motion EAI argues there are no facts in dispute that warrant a hearing in this case, no party has requested a hearing in this case, there are no facts common between File No. EO-2013-0396 and this case which warrant consolidating these cases for hearing and,

alternatively, the briefing schedule for this case should be shortened to allow for the presentation of a final Commission decision by July 15, 2013, because, to continue to provide interstate transmission service after it exits from the Entergy System Agreement on December 18, 2013, EAI needs to be integrated into the Midcontinent Independent System Operator (“MISO”) on December 19, 2013.

3. In this case EAI seeks for the Commission to determine on an expedited basis that it lacks jurisdiction over EAI’s integration into MISO or, alternatively, that the Commission determine that EAI integrating into MISO is not detrimental to the public interest. In File No. EO-2013-0396 EAI, jointly with others, seeks for the Commission to authorize the acts necessary to effectuate a plan whereby an affiliate of ITC Holdings, Inc. would acquire from EAI certain of its transmission assets in Missouri and become certificated by the Commission to use them in serving the public.

4. In their application to intervene KCPL and GMO include the following statements:

10. The Companies do not oppose either Entergy’s choice to join MISO or their choice to sell their Missouri transmission assets to ITC, as long as specific issues are adequately addressed in order to protect the Companies’ interests. Rather, the Companies oppose the use of its system without appropriate compensation and oppose the increases in transmission costs to the Companies based solely on Entergy’s voluntary choice to join MISO. The Companies are merely seeking to be held harmless for Entergy’s choice. * * * *

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17. * * * * The Companies anticipate that moving from service under the Entergy OATT to the MISO OATT will more than double its transmission costs. As previously noted in filings before this Commission, several of EAI’s facilities in Missouri are used in providing transmission service from the Crossroads Energy Center (“Crossroads”) (which is physically located in Entergy’s service territory) to GMO service territory. This transmission service for Crossroads uses the Entergy to SPP interconnections at the Omaha switching station to Ozark Beach. The Companies anticipate that the application of MISO’s Schedule 7

through and out transmission service will increase GMO's firm transmission fees for Crossroads delivery by approximately \$3.76 million per year, and perhaps higher based upon recent data.

Footnotes omitted.

5. The issue of whether GMO's retail customers would bear the costs of transmission from Crossroads was a contested issue in GMO's last two general electric rate cases before this Commission—File Nos. ER-2010-0356 and ER-2012-0175. In both cases the Commission decided they would not. On this topic, in GMO's most recent rate case decided January 9, 2013 (File No. ER-2012-0175), the Commission made the following findings at pages 53 and 58 of its *Report and Order*:

Findings of Fact

1. GMO's MPS service area receives part of its power from Crossroads Energy Center ("Crossroads"), a generating facility in Clarksdale, Mississippi.
2. In the previous rulings, the Commission determined that the fair market value of Crossroads was \$61.8 million before depreciation and deferred taxes.
3. In the previous rulings, the Commission denied the costs of transmitting power from Crossroads to MPS territory.

* * * *

Findings of Fact

1. Crossroads is 500 miles from GMO's MPS territory.
2. Between the territory of MPS and Crossroads are the territories of regional transmission organizations ("RTOs"). RTOs collect payment for the transmission of power through their territories. GMO does not belong to all those RTOs so GMO must pay higher fees for transporting power than to an RTO of which GMO is a member.
3. There are generating facilities closer, including Dogwood's facility and the South Harper plant. Even though Crossroads provides power for GMO only during half of the days in the summer, GMO pays about \$5.2 million to transmit power from Crossroads all year round. The high cost of transmission is not outweighed by lower fuel costs in Mississippi.

Based on those findings of fact, the Commission reached the following conclusions of law and decision found on pages 58 to 59 of its *Report and Order*:

Discussion, Conclusions of Law, and Ruling

GMO has not carried its burden of proof on transmission costs. GMO alleges that the lower price of fuel in Mississippi outweighs the cost of transmission. The Commission has found that the evidence preponderates otherwise.

GMO also argues that the Commission must include transmission costs because FERC has approved a rate for that service. In support, GMO cites opinions providing that the Commission cannot nullify FERC's rate or any other FERC ruling.

But as Dogwood explains, and Staff and MEGG agree, those opinions do not bar the Commission from determining the prudence of buying power from Crossroads. For example:

Without deciding this issue, we may assume that a particular *quantity* of power procured by a utility from a particular source could be deemed unreasonably excessive if lower cost power is available elsewhere, even though the higher cost power actually purchased is obtained at a FERC-approved, and therefore reasonable, *price*.

In other words, FERC's rate-setting for a facility requires neither the purchase of power, nor approval of that purchase, from that facility.

Moreover, in the presence of a FERC-approved rate, the courts have opined that review of cost prudence remains within the Commission's jurisdiction.

Regarding the states' traditional power to consider the prudence of a retailer's purchasing decision in setting retail rates, we find no reason why utilities must be permitted to recover costs that are imprudently incurred; those should be borne by the stockholders, not the rate payers. Although Nantahala underscores that a state cannot independently pass upon the reasonableness of a wholesale rate on file with FERC, it in no way undermines the long-standing notion that a state commission may legitimately inquire into whether the retailer prudently chose to pay the FERC-approved wholesale rate of one source, as opposed to the lower rate of another source.

And to recognize the marginal value of purchased power from Crossroads does not constitute an endorsement of its inflated cost.

Therefore, the Commission concludes that including the Crossroads transmission costs does not support safe and adequate service at just and reasonable rates, and the Commission will deny those costs.

Footnotes omitted. KCPL's and GMO's concern about increased transmission costs for electricity from Crossroads will have no impact on GMO's retail customers, unless the Commission's denial of recovery of those costs in retail rates is overturned, or changed in the future.

6. Staff realizes that prior to today KCPL, GMO, Empire and MJMEUC have only filed applications to intervene in this case, but based on the information that they have presented in those applications, and in their pleadings in File No. EO-2013-0396, Staff believes KCPL, GMO, Empire and MJMEUC have not yet raised even a colorable argument the Commission has jurisdiction to address any of the issues they raise in those applications to intervene. Staff recommends the Commission order KCPL, GMO, Empire and MJMEUC both (i) to present their legal arguments and authority for why this Commission has jurisdiction over the issues they assert the Commission must decide in this case and (ii) to identify the facts they assert are in dispute.

7. Staff views that the State of Missouri's interests in this case are different than the State of Missouri's interests in File No. EO-2013-0396. This case involves which regional transmission organization/independent system operator ("RTO"/"ISO"), independent coordinator of transmission ("ICT") or other entity the FERC approves to assume functional control over all or parts of EAI's transmission facilities in Missouri. File No. EO-2013-0396 involves the

Commission's continued intrinsic control of the reliability and safety and other aspects of transmission facilities in Missouri.

8. The Commission might note the veiled statement on page 5, in footnote 4, of EAI's Motion For Reconsideration: "Respectfully, in the event the Commission does not act within the time requested, EAI reserves the right to take appropriate action, including filing a petition under PURPA Section 205(a), to ensure against delays to its integration into MISO, which is essential for EAI to continue providing interstate transmission service upon its exit from the Entergy System Agreement in December of this year." Public Utility Regulatory Policies Act of 1978 ("PURPA") Section 205(a) ("16 U.S.C. Section 824a-1") states:

(a) State laws

The Commission [FERC] may, on its own motion, and shall, on application of any person or governmental entity, after public notice and notice to the Governor of the affected State and after affording an opportunity for public hearing, exempt electric utilities, in whole or in part, from any provision of State law, or from any State rule or regulation, which prohibits or prevents the voluntary coordination of electric utilities, including any agreement for central dispatch, if the Commission determines that such voluntary coordination is designed to obtain economical utilization of facilities and resources in any area. No such exemption may be granted if the Commission finds that such provision of State law, or rule or regulation--

(1) is required by any authority of Federal law, or

(2) is designed to protect public health, safety, or welfare, or the environment or conserve energy or is designed to mitigate the effects of emergencies resulting from fuel shortages.

WHEREFORE, Staff, as the Commission ordered in its May 3, 2013, *Order Directing Filing*, responds to EAI's Motion For Reconsideration of the Commission's *Order Granting Interventions and Setting Procedural Schedule* by recommending the Commission order KCPL, GMO, Empire and MJMEUC both (i) to present their legal arguments and authority for why this Commission has jurisdiction over those issues which they assert the Commission must decide in

this case and (ii) to identify the facts they assert are in dispute.

Respectfully submitted,

/s/ Nathan Williams

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 9th day of May, 2013.

/s/ Nathan Williams